

ORDINANCE NUMBER O- **19565** (NEW SERIES)

DATE OF FINAL PASSAGE JAN 17 2007

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
37, TITLED "MANAGED COMPETITION," RELATING TO
THE CITY'S USE OF A MANAGED COMPETITION
PROCESS TO DETERMINE THE MOST ECONOMIC AND
EFFICIENT MEANS OF PROVIDING CITY SERVICES.

WHEREAS, a ballot proposition was submitted to the qualified voters of the City of
San Diego on November 7, 2006, as to a proposed amendment to the City Charter section 117,
regarding the use of managed competition; and

WHEREAS, this ballot proposition amended Section 117 by adding subsection (c), which
allows the City of San Diego to employ an independent contractor when it is determined that
services can be provided more economically and efficiently by an independent contractor than by
persons employed in the Classified Service, while maintaining service quality and protecting the
public interest;

WHEREAS, the City of San Diego and its labor organizations have met and conferred in
good faith regarding this ordinance, in order to implement the proposed amendments to Charter
section 117; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, of the San Diego Municipal Code be and is
hereby amended by adding Division 37, sections 22.3701 through 22.3716, titled "Managed
Competition," to read as follows:

§ 22.3701 Purpose

- (a) The City of San Diego is committed to delivering quality services to taxpayers, residents and visitors in the most economical and efficient ways possible. Under Charter section 117(c), Managed Competition is the process for determining whether City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest. Nothing in this Division shall limit or restrict the City from contracting services under any other provision of law.
- (b) This Division is intended to set forth policies and procedures to implement Charter section 117, subsection (c). The City Manager may also provide for additional policies, procedures and/or regulations consistent with this Division and Charter section 117(c).

§ 22.3702 Pre-Competition Assessment

- (a) If the City Manager determines as part of a pre-competition assessment that a City service may be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest, the City Manager may select appropriate services for Managed Competition. If the City Manager intends to submit a City service to Managed Competition, the City Manager will then prepare a preliminary written Statement of Work for that particular City service, and will prepare

a report setting forth the rationale for putting a City service into Managed Competition. This report will be transmitted to the Managed Competition Independent Review Board for its consideration.

- (b) In determining whether a City service is appropriate for Managed Competition, the City Manager will consider such factors as the type of service provided, the abilities of the current and projected competitive market, potential efficiencies that could be achieved, the capacity of the City to deliver essential services in the event of contractor default, and the overall welfare of the public. The City Manager will not recommend for Managed Competition, inherently governmental services, or those services so intimately related to the exercise of the public interest as to mandate their performance by City employees. Police Officers, Fire Fighters and Lifeguards who participate in the Safety Retirement System will not be subject to Managed Competition.
- (c) A request for qualifications process may be used prior to the solicitation for services in appropriate cases.
- (d) Nothing in this Division shall confer any right to any potential or current independent contractor to bid on a City service for which a solicitation has not been issued.

§ 22.3703 Minimum Contract Standards and Contractor Qualifications

- (a) The City Manager shall require that any independent contractor providing services to the City meet minimum contract standards to be contained in

the solicitation for services. The minimum contract standards shall include the following:

- (1) that the independent contractor provide proof that it maintains an adequate level of liability insurance consistent with City of San Diego risk management requirements;
- (2) that the independent contractor has a policy of equal employment opportunity;
- (3) that the independent contractor has committed to complying with the City of San Diego Living Wage Ordinance, San Diego Municipal Code Chapter 2, Article 2, Division 42, sections 22.4201 through 22.4245, if required by the terms of that ordinance;
- (4) that the independent contractor has appropriate safety policies and procedures in place to protect the public and its employees in providing the service;
- (5) that the independent contractor will comply with all applicable employment and labor laws;
- (6) performance standards and consequences for non-performance, up to and including termination of the contract;
- (7) that the independent contractor designate appropriate personnel to monitor contract compliance;

- (8) that the independent contractor's employees must maintain the same certifications as will be required of City employees performing the same service;
 - (9) that if background checks will be required of City employees performing a particular service, the independent contractor will perform background checks on employees performing those same services;
 - (10) the same regulations and requirements of service delivery necessary to maintain service quality that will apply to a City department shall also apply to any independent contractor;
 - (11) that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a member of the Independent Review Board during the term of the contract with the City; and
 - (12) that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a former member of the Independent Review Board during the term of the contract with the City, if that former Board member participated in the selection process for that contract.
- (b) In addition, in appropriate cases, as determined in the discretion of the City Manager, the City may require:
- (1) that the independent contractor has provided this service satisfactorily for other comparably-sized cities, counties, districts,

agencies or private entities for a sufficient time period, and thereby
has demonstrated its ability and expertise to provide the service;

- (2) that the independent contractor maintain a customer service and
customer complaint resolution plan;
- (3) that the independent contractor have adequate financial resources
in order to provide the requested services; and
- (4) that the independent contractor's employees have the necessary
technical qualifications to provide the services.

§ 22.3704 Resources for City Employees Involved in Managed Competition

City employees involved in Managed Competition will be provided with
resources, such as information, technical assistance and staff support, to develop
strategies for optimized efficiency, economy and effectiveness, in order to
respond to a solicitation. In addition, in the City Manager's sole discretion, the
City Manager may grant a department reasonable time and resources to improve
its operations before being subject to Managed Competition.

§ 22.3705 City Bid for Non-City Services

In areas where City workers are consistently productive and cost efficient, a City
department can propose to the City Manager that City workers provide a service
to other entities, provided that this would be of benefit to the City and its
taxpayers, and when such work can increase the City's overall efficiency and
effectiveness, while maintaining service quality and protecting the public interest.

§ 22.3706 Managed Competition Independent Review Board Established

A Managed Competition Independent Review Board is established pursuant to San Diego Charter section 117(c) to advise whether the proposal of City employees or that of an independent contractor will provide the services to the City more economically and efficiently while maintaining service quality and protecting the public interest.

§ 22.3707 Appointment of Members of the Independent Review Board

The Board shall consist of

- (a) Seven (7) members appointed by the City Manager;
- (b) Three (3) Board members shall be City staff, including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee; and
- (c) Four (4) Board members shall be private citizens whose appointment shall be subject to City Council confirmation, and who shall serve without compensation.

§ 22.3708 Terms of Members of the Independent Review Board

To promote continuity and organizational knowledge, the terms of the initial appointees to the Independent Review Board shall be staggered as follows: Two private citizens shall serve an initial three year term, and the other two private citizens shall serve two year terms. All subsequent terms by private citizens shall be two years. A member who has served two complete terms shall be ineligible for reappointment for two years after leaving the Board. The three City staff Board members shall not be subject to the above term limits.

§ 22.3709 Qualifications of Independent Review Board Members

Each member of the Board shall comply with the following qualifications during his or her tenure on the Board:

- (a) No member of the Board shall make a financial contribution to, or publicly support or oppose, a candidate for or incumbent in City office;
- (b) No member of the Board is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of this Code;
- (c) Board members shall not have any personal or financial interests that would create conflict of interests with the duties of a Board member;
- (d) Members of the Board shall be prohibited from entering into a contract with or accepting employment from an independent contractor that secures a City contract through Managed Competition for the duration of the contract. All City contracts secured through Managed Competition shall include a condition that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a member of the Board during the term of the contract with the City; and
- (e) Former members of the Board shall not enter into a contract with or accept employment with an independent contractor that secures a City contract through Managed Competition for the duration of that contract after leaving the Board, if that Board member participated in the selection process for that contract. All City contracts secured through Managed

Competition shall include a condition that the City shall unilaterally and immediately terminate the contract if the independent contractor enters into a contract with or employs a former member of the Board during the term of the contract with the City, if that former Board member participated in the selection process for that contract.

§ 22.3710 Removal of Member of the Independent Review Board

A Board member subject to City Council confirmation may be removed for cause by a vote of the majority of the members of the Council. Before the Council may remove a member of the Board, written charges shall be made against the Board member and an opportunity afforded for public hearing before the Council acts upon such charges. While charges are pending before the Council, the Council may suspend a Board member's participation on the Board.

§ 22.3711 Confidentiality and Conflict of Interest

- (a) The potential for abuse from knowingly or unknowingly causing or gaining unfair advantage from access to information, or the ability to affect the selection process for personal gain must be understood and avoided by all levels of personnel involved. The City will assist departments to understand, train personnel, and implement safeguards and procedures to avoid the potential for ethical conflicts and abuses. No elected official or City employee shall provide procurement sensitive information to any potential contractor.
- (b) A conflict of interest code shall be adopted by the City Council for all members of the Managed Competition Independent Review Board. All

members of the Managed Competition Independent Review Board shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.

- (c) In the event a service is awarded to an independent contractor through Managed Competition, impacted employees in the Classified Service will not be precluded or hindered from accepting employment with the independent contractor.

§ 22.3712 Solicitation of Proposals and Support for the Independent Review Board

- (a) When it is determined, as a result of the pre-competition assessment, that a Managed Competition process would benefit the City, appropriate acquisition actions, such as development and advertising of the solicitation of proposals for the service, will be prepared by City staff.
- (b) City staff will provide support to the Independent Review Board in its consideration of proposals.

§ 22.3713 Consideration of Proposals by Independent Review Board

- (a) In determining whether a proposal of an independent contractor or City Department will provide a service to the City most economically and efficiently while maintaining service quality and protecting the public interest, the Independent Review Board will consider the following factors:
 - (1) the Independent Review Board should not recommend awarding a contract to an independent contractor unless there have been at

least two bids by independent contractors for the service subject to Managed Competition;

- (2) whether the bids by the City Department and the independent contractors are responsive to the solicitation and responsible;
- (3) whether there is reliable information demonstrating that any of the independent contractors bidding on the work have engaged in unethical business practices that would warrant the rejection of their bid;
- (4) unless the bid of an independent contractor is more than ten (10) percent lower than the bid of a City Department currently providing the service for the proposed term of the contract, the Independent Review Board should not recommend awarding the service in question to the independent contractor. This minimum cost differential is meant to discourage the City from implementing a significant change in service delivery on the basis of marginal estimated savings, and to account for such difficult to estimate factors as the potential costs of reduced productivity and service disruption during transition. In reviewing this factor, the Board will utilize a cost analysis, the purpose of which is to calculate the costs that are saved and the costs that are generated by contracting the service; and
- (5) which independent contractor or City Department can provide the best overall value to the City. The Independent Review Board will

not necessarily recommend the low bidder, as the low bidder may not be the party that is presenting the most responsible and responsive bid, i.e., the low bidder may not always be the party that can provide the best and most reliable service to the City, perhaps because the low bidder has less experience or lacks the proven track record of a City Department or an independent contractor with a higher bid.

- (b) If the Board determines that an independent contractor meets the minimum contract standards and provides the best overall value to the City according to the factors set forth above, the Independent Review Board shall recommend to the City Manager that the contract be awarded to that independent contractor. The Independent Review Board's recommendation to the City Manager shall include a written explanation providing the rationale for its recommendation.

§ 22.3714 City Manager and City Council Consideration of Decision of Independent Review Board

Upon receipt of a recommendation from the Independent Review Board that a City service should be awarded to an independent contractor, the City Manager shall either accept or reject that recommendation in its entirety. If the City Manager accepts the recommendation, then the City Manager shall forward that recommendation to the City Council. That recommendation shall include the written recommendation of the Independent Review Board, and a transition strategy that addresses contract monitoring, service interruption and affected

employee procedures, as well as a proposed agreement with the independent contractor. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager. In order to accept the recommendation to award a service to an independent contractor, the City Council must determine that this City service can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service, while maintaining service quality and protecting the public interest.

§ 22.3715 Notice to Affected Labor Organization and Affected Employee Procedures

- (a) Before the City Manager recommends to the City Council that it approve a proposed agreement with an independent contractor to perform work for the City which is currently being provided by a City Department, the City Manager will notify all labor organizations whose members would be affected by such an agreement, as well as the City Personnel and Labor Relations Departments, and shall provide the number of City positions by job classification, that may be displaced if the contract is awarded to the independent contractor.
- (b) City employees who will be laid off as a result of Managed Competition shall be entitled to utilize the layoff procedures set forth in Section L-5A of the Personnel Regulations of the City of San Diego, entitled "Layoff, other than Police or Fire Units", as well as Rule V of the Civil Service Rules, entitled "Layoff and Reemployment."

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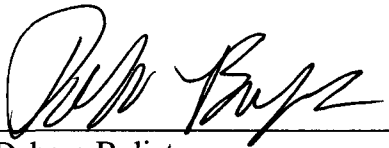
§ 22.3716 Monitoring Performance of Independent Contractors

The City Manager shall have the sole responsibility for administering and monitoring any agreements with independent contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

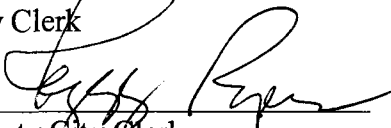
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Debora Buljat
Deputy City Attorney

DB:jm:amp
11/22/06
11/29/06COR.COPY
Or.Dept: Mayor
O-2007-57

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at its meeting of JAN 09 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1-17-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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